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152	7590	11/02/2005	EXAMINER	
CHERNOFF, VILHAUER, MCCLUNG & STENZEL 1600 ODS TOWER 601 SW SECOND AVENUE PORTLAND, OR 97204-3157			SMALLEY, JAMES N	
			ART UNIT	PAPER NUMBER
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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/645,226
Filing Date: August 21, 2003
Appellant(s): LIN, STEVE

Dennis E. Stenzel
For Appellant

EXAMINER'S ANSWER

MAILED

NOV 02 2005

Group 3700

This is in response to the appeal brief filed 17 August 2005 appealing from the Office action mailed 17 May 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

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The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

3,991,904	Davis et al.	11-1976
4,487,324	Ostrowsky	12-1984
5,101,870	Farris	4-1992

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis et al. US 3,991,904 in view of Ostrowsky US 4,487,324 and in view of Farris US 5,101,870.

(10) Response to Argument

Regarding Appellant's point (1) regarding the rejection of claims 1-6, Examiner notes the Appellant admits on page 6 of the Appeal Brief, 3rd paragraph, that figure 5 of Farris '870 discloses a partially cylindrical container. Examiner notes the claimed limitation, founds in claim 1, paragraph (a), is a

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"substantially cylindrical" container. It is unclear how much a partially cylindrical container anticipates a claimed substantially cylindrical container.

Regardless, the rejection of the claims was supported further in view of *In re Dailey et al.*, 149 USPQ 47, in which the courts held a change in form or shape to be generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. Examiner submits the Appellant's substantially cylindrical container is not the product of an unexpected result over the prior art containers.

Furthermore regarding Farris '870, Examiner notes the reference was cited to show it is known to vary the shape of a container, as shown by the various embodiments disclosed in the figures therein. It is the Examiner's position that it would have been obvious to one of ordinary skill to form the container of Davis '904 in the shape of a cylinder. Should the Board find this rejection to be unsatisfactory, Examiner will provide further evidence showing it is well known to vary the shape of containers, forming them to any suitable shape, and furthermore that substantially cylindrical containers are well known in the art.

Regarding Appellant's point (2) regarding the rejection of claims 1-6, Examiner notes the similarities between the connection means of Davis '904, comprising a lip (37) on the inner surface of the cap anchor band (24), which engages with a container auxiliary bead (3). In column 3, lines 14-18, the reference teaches the bead (37) prevents band (24) from riding up the container neck when opening and closing the cap. Similarly, Ostrowsky '324 teaches such structure in figure 7, disclosing internal bead (195), and teaching in column 6, lines 24-33, the bead engages a container neck recess or projection and helps "resist removal of the closure from the container neck in a known manner." The reference further teaches a screw threaded embodiment in figure 4, which uses interlocking ratchet teeth (29) mating with container neck lugs (31) to prevent removal of the cap.

While the embodiments of Ostrowsky '324 result in different removal resistance, i.e. resisting removal with the snap bead engagement or preventing removal with the ratchet teeth and threaded embodiment, the reference teaches one may be applied in place of the other, as desired by one of ordinary skill. It is the Examiner's position that one of ordinary skill would find it obvious, if he so desired, to modify the cap of Davis '904, replacing the snap bead connection with a threaded cap having

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interlocking ratchet teeth, because of the teaching of Ostrowsky '324 that the two means may be used in place of each other, on dispensing caps. Examiner also notes that although the lip (37) of Davis '904 is segmented, the reference teaches in col. 3, lines 18-21, that more than one bead may be provided. The segmenting of the band would only effect the degree to which the cap resists removal from the container, and is otherwise functionally identical to the continuous internal bead (195) of Ostrowsky '324.

Regarding Appellant's point (3) regarding the rejection of claims 1-6, Examiner notes the Appellant has cited column 3, lines 23-35, to discredit the sealing effect of the cap. However, the passage "Reference to FIG. 3 will show that the mouth or upper edge of the container really plays no part in the sealing effected by the closure," merely teaches the closure is responsible for the sealing. In fact, in column 3, lines 11-14 teach element 36 is a "sealing ring." Appellant's circumferential recess is created by a similar sealing bead. See figures 7-8 of the instant invention. Examiner also notes Davis '904, figure 3, showing the closure cap sealing bead (36) seats underneath the container neck flange. This container neck flange seats within a recess created between bead (36) and sealing ring (33). Thus, Examiner asserts Davis '904 teaches a sealing recess.

Regarding Appellant's arguments drawn to the rejection of claim 8, Examiner notes that because the applied prior art does obviate all claimed limitations, claim 8 is properly rejected. Furthermore, Appellant argues the bung of Davis '904 is annular, and therefore cannot be applied to reject the claimed radial tongue portion (38). Examiner notes instant figures 6, 7 and 9, which best show the claimed tongue. The tongue (38) extends integrally from the unlabeled annular flange, as a projection with square edges (figure 7). Furthermore, Examiner notes Davis '904, figure 2, which shows the bung deep end (31) also as an integral extension of an annular ring/bung (30). The primary structural difference between the instant radial tongue portion, and the bung deep end of Davis '904, is that the latter has smooth edges which blend into the rest of the annular ring in a slope, while the former comprises a well-defined tongue with square edges.

While the Examiner agrees the two elements have clear structural differences in view of each other, it is the Examiner's position that the Appellant's claim does not define over Davis '904. The word "radially" stems from the word radius, which is well-known to be a line from the center of a circle, to the

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circumference. As applied in the art, the word "radially" generally refers to structures which extend fully, or partially, along such a line. The instant tongue has a slight radial thickness, but is otherwise disposed circumferentially along an arc segment of the unlabeled annular ring. It is the Examiner's position that the bung deep end (31) of Davis '904 also comprises a slight radial thickness, much like that of the Appellant's invention, but is also mostly disposed circumferentially along an arc segment. In other words, to the best degree the Examiner understands the claimed invention, the bung deep end (31) of Davis '904 comprises as much of a "radial" tongue portion as that of the instant invention.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

James Smalley


NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER

Conferees:


Stephen Cronin


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